OFFICE COPY

MAR 14 1973

MICHAEL RODAK, JR., C

IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1973

NO. 72-1255

RAYMOND W. VOWELL, COMMISSIONER OF PUBLIC WELFARE, STATE OF TEXAS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,

Petitioner

VS.

CONSUELO LOPEZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOHN L. HILL
Attorney General of Texas
JOHN M. BARRON
First Assistant
LARRY F. YORK
Executive Assistant
J. C. DAVIS
Assistant Attorney General
JACK SPARKS
Assistant Attorney General
Box 12548, Capitol Station
Austin, Texas 78711
Attorneys for Petitioner

RESPONSE NOT PRINTED

TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES	ii
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT OF THE NATURE OF THE CASE	2
REASONS FOR GRANTING THE WRIT	3
ARGUMENT AND AUTHORITIES	3
CONCLUSION	7
CERTIFICATE OF SERVICE	8
APPENDIX	1A

INDEX OF AUTHORITIES

CASES: Page

Cheley v. Burson, 324 F.Supp. 678 (ND Ga. 1971) 7

Conner v. Finch, 314 F.Supp. 364 (ND Ill. 1970) aff'd 400 U.S. 1003 (1971) 6

Dandridge v. Williams, 397 U.S. 471, 478 (1970) 6, 7, 8

Jefferson v. Hackney, 92 S. Ct. 1724, 406 U.S. 535 (decided May, 1932) 4

King v. Smith, 392 U.S. 309 (1968) 6

Stinson v. Finch, 317 F.Supp. 581 (ND Ga. 1970) 6

Westberry v. Fisher, 297 F.Supp. 1109 (D. Maine S.D. 1969) 6

OTHER AUTHORITIES:

Social Security Act, 42 U.S.C.A. 606 ..... 2, 3, 4, 6

28 U.S.C. 1254(1) and (2) 2

IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1973

NO. .....

RAYMOND W. VOWELL, COMMISSIONER OF PUBLIC WELFARE, STATE OF TEXAS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,

Petitioner

vs.

CONSUELO LOPEZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, Raymond W. Vowell, Commissioner of Public Welfare, State of Texas, individually and in his official capacity, Defendant-Appellee, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the U. S. Court of Appeals for the Fifth Circuit entered in this proceeding on January 9, 1973.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth

Circuit reversing the judgment of the District Court for the Southern District of Texas is reprinted in the Appendix, infra, pp. 1A-9A.

JURISDICTION

The judgment of the U. S. Court of Appeals for the Fifth Circuit was entered on January 9, 1973. This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1) and (2).

QUESTIONS PRESENTED

This suit involves the right of a non-parent caretaker relative in the State of Texas to receive public aid benefits under the State-administered, but federally assisted program of Aid to Families with Dependent Children (AFDC).

STATEMENT OF THE NATURE OF THE CASE

The trial court correctly held that the State of Texas, with its broad discretion in defining need, has the power to determine that all married caretaker relatives who live with their spouses are not eligible to receive AFDC assistance. The trial court held that the state regulation in question was reasonable and did not contravene the provisions of the Social Security Act. A portion of the opinion of the trial court is reprinted in the Appendix, infra, pp. 10A-14A. The court of appeals reversed the decision of the trial court and held that the regulation in question was inconsistent with Section 406 of the Social Security Act (42 U.S.C.A. 606) and, therefore, violative of the Supremacy Clause of the Constitution. It is submitted that the state regulation is not in conflict with the provisions of the Social Security Act and that the decision of the trial court is in all things correct.

REASONS FOR GRANTING THE WRIT

1. The Social Security Act does not require that an AFDC program pay for the caretakers. Rather, this is permissive. Representatives of the federal government have repeatedly advised the State Welfare Department that some states do not set their AFDC programs up on a basis for paying caretakers but pay only for the AFDC eligible children.

2. Texas law is clear that a spouse is responsible to pay for the care of his spouse. Consequently, there is no way that the children's funds could be protected if welfare benefits are paid for the total care of the family as all of the family would end up living on the resources of the children.

3. The opinion of the U. S. Court of Appeals will force the State Welfare Department into a position of paying for children in every stepparent situation in the State of Texas where the spouse who does not take care of the children makes the decision that he or she does not want to support the other spouse and the children.

4. The State of Texas has the power to determine how limited welfare funds will be expended and the regulation is reasonable and necessary to equitably distribute such limited funds where the regulation does not conflict with the provisions of the Social Security Act.

ARGUMENT AND AUTHORITIES

Paragraph (c) of Section 406 of the Social Security Act (42 U.S.C.A. 606) provides as follows:

> "(c) The term '*relative* with whom any dependent child is living' means the individual who is one of the relatives specified in subsection (a) of this

section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home." (Emphasis supplied.)

This Section provides for aid to a "relative" and does not provide for aid to more than one relative caretaker. The trial court opinion that the state regulation was reasonable and did not contravene the provisions of the Social Security Act was correct. The opinion of the U. S. Court of Appeals holding the state regulation to be in conflict with the Social Security Act is clearly erroneous.

A case directly in point is *Jefferson vs. Hackney*, 92 S.Ct. 1724, 406 U.S. 535 (decided May 30, 1972), which expressly held that the Texas State Constitution provides a ceiling on the amount the state can spend on welfare assistance grants and that the state has the power to determine how to allocate and pay out the limited benefits. The Supreme Court stated:

> "Striking the proper balance between these competing policy considerations is of course not the function of this Court. 'There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.' King v. Smith, 392 U.S. 309, 318-319 (1968) (footnotes omitted). So long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act, appellants' policy arguments must be addressed to a different forum." (92 S.Ct. 1729)

The state regulation in issue is reasonable and proper and does not conflict with the federal law.

In *Jefferson vs. Hackney*, supra, the Supreme Court further held as follows:

> "This Court emphasized only recently, in Dandridge v. Williams, 397 U.S. 471, 485 (1970), that in 'the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.' A legislature may address a problem 'one step at a time,' or even 'select one phase of one field and apply a remedy there, neglecting the others.' Williamson v. Lee Optical Co., 348 U.S. 483, 488 (1955). So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and needy are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them." (92 S.Ct. 1731)

Finally, the Court held:

> "In conclusion, we re-emphasize what the Court said in Dandridge v. Williams, 397 U.S., at 487: 'We do not decide today that the (state law) is wise, that it best fulfills the relevant social and economic objectives that (the state) might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.' " (92 S.Ct. 1734)

The statutory analysis in AFDC cases must consider that "the federal law gives each state great lati-

tude in dispening its available funds." *Dandridge vs. Williams*, 397 U.S. 471, 478 (1970). There is no question that states have the power to determine the standard of need and the level of benefits, *Dandridge, supra; Stinson v. Finch*, 317 F.Supp. 581 (ND Ga. 1970); *Conner v. Finch*, 314 F.Supp. 364 (ND Ill. 1970) aff'd 400 U.S. 1003 (1971); *Westberry v. Fisher*, 297 F. Supp. 1109 (D. Maine S.D. 1969); and to uphold a state regulation, "It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor". *Dandridge, supra*, p. 486. Of great importance in analzing a state regulation is whether the regulation is related to need; a regulation which does not consider the financial situation of a family may be struck down. *King v. Smith*, 392 U.S. 309 (1968).

With these propositions in mind, it may be seen that the regulations here in question (Sections 3411 and 3454) are directly related to the state's determination of need. The regulations set forth the requirements which custodians of dependent children must meet to themselves be eligible for AFDC payments. Under Section 3411, if the relatives with whom the children live are married and neither is incapacitated nor the recipient of categorical assistance, the state has determined that only the needs of the children may be budgeted. This is clearly a determination of need by the state and is valid. One of the statutory requirements is that "aid to families with dependent children . . . shall be furnished with reasonable promptness to all eligible individuals . . ." 42 U.S.C.A. 602 (a) (10). There is no question here that the children involved are receiving aid. The Constitution does not empower

federal courts to "second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients". *Dandridge, supra,* p. 487. Eligibility factors limiting eligibility to those dependent children living with relatives in a specified degree (as in Section 3454 of the *Financial Services Handbook*) are consistent with the general policy declarations of the Social Security Act and are not unconstitutional. *Cheley v. Burson,* 324 F.Supp. 678 (ND Ga. 1971). "From its inception, the Act has defined 'dependent child' in part by reference to the relatives with whom the child lives. When a 'dependent child' is living with relatives, then 'aid' also includes payments and medical care to those relatives, including the spouse of the child's parent." *Dandridge, supra,* p. 479. It is undisputed that a state may consider the relative with whom a child lives when computing welfare payments, and it is clear that Texas does so when it determines that a need exists. See Section 3411.

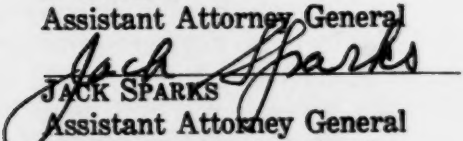
If the state legitimately and reasonably determines that need in certain cases does not exist, it is certainly not required under the Act to expend its funds. As to Plaintiff Consuelo Lopez and all others similarly situated, regulations Sections 3411 and 3454 of the *Financial Services Handbook* are reasonable, do not contravene the provisions of the Social Security Act, and are not unconstitutional. The state has, under its power to determine need, found that married persons who care for dependent children do not require more than the payments for the children themselves, when neither spouse is the recipient of categorical assistance.

CONCLUSION

The regulation in question does not conflict with any

provision of the federal Social Security Act and the opinion of the trial court should be sustained. For the foregoing reasons the Petition for Certiorari should be granted.

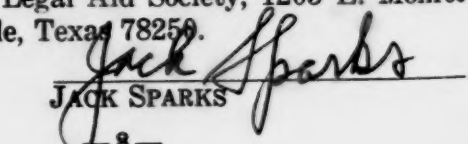
Respectfully submitted,
JOHN L. HILL
Attorney General of Texas
JOHN M. BARRON
First Assistant
LARRY F. YORK
Executive Assistant
J. C. DAVIS
Assistant Attorney General



JACK SPARKS
Assistant Attorney General
Box 12548, Capitol Station
Austin, Texas 78711
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Jack Sparks, Assistant Attorney General of the State of Texas, am a member of the Bar of the Supreme Court of the United States, and I do hereby certify that three copies of the foregoing petition for a Writ of Certiorari have been forwarded by United States Mail, postage prepaid to the attorneys for Consuelo Lopez, et al., Nancy Duff Levy, Steven J. Cole and Henry A. Freedman, NLSP Center of Social Welfare Policy and Law, 25 W. 43rd Street, 12th Floor, New York, New York 10036, and J. L. Covington, Cameron County Legal Aid Society, 1205 E. Monroe Street, Brownsville, Texas 78250.



JACK SPARKS

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 72-1643

CONSUELO LOPEZ, individually and on behalf of all other persons similarly situated,

Plaintiff-Appellant,

vs.

RAYMOND W. VOWELL, Commissioner of Public Welfare, State of Texas, individually and in his official capacity,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Texas

---

(January 9, 1973)

Before COLEMAN, AINSWORTH and DYER, Circuit Judges.

DYER, Circuit Judge: This class action involves the right of indigent non-parent caretaker relatives in the State of Texas to receive public aid benefits under the state-administered, but federally assisted, program of Aid to Families with Dependent Children (AFDC). Mrs. Lopez is a caretaker relative who would be entitled to AFDC benefits except for the fact

that §§ 3411[1] and 3454[2] of the *Financial Services Handbook* of the Texas State Department of Public Welfare deny aid to caretakers of needy dependent children if the caretakers are married and are living with their spouses. Mrs. Lopez complains that §§ 3411 and 3454[3] are inconsistent with § 406 of the Social Security Act, 42 U.S.C.A. § 606,[4] and are therefore vio-

---

[1]In relevant part, § 3411 provides:

Caretaker (AFDC)

. . . .

(4) Must be a single relative (either a legal parent or another single relative) within the specified degree of relationship. However, no caretaker will be certified (and only the needs of the children) may be budgeted if the relatives are a married couple and each spouse is present, unless incapacity or receipt of categorical assistance is involved.

[2]In pertinent part, § 3454 provides:

Special Regulations Regarding Children Placed in Home of Relative

In those situations where the child(ren) live with relatives, within the specified degree of relationship (i.e., a legally married couple) other than parents (e.g., grandfather and grandmother, uncle and aunt, etc.), neither relative may be designated as a caretaker and only the needs of the eligible children may be included in the assistance grant *unless* (a) one of the relatives is determined to be incapacitated by the Medical Review Team and is otherwise eligible (the Medical Review is to determine ability to support spouse and not for purpose of determining deprivation) *or* (b) the relative's spouse is a recipient of categorical assistance.

. . . .

[3]The Texas *Financial Services Handbook* was revised in November 1972. Although a few minor word changes were made to both sections, neither section was modified substantively. The revised § 3454, however, now appears as § 3453.

[4]In pertinent part, § 406 provides:

(a) The term "dependent child" means any needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, step-

lative of the Supremacy Clause of the Constitution; alternatively, she alleges that the challenged regulations violate the Equal Protection Clause of the Fourteenth Amendment. On a motion to dismiss for a failure to state a claim, the district court held as a matter of law that a State, with its broad discretion in defining need, has the power to determine unilaterally that all married caretaker relatives who live with their spouses are not needy and are therefore not entitled to receive AFDC assistance. We reverse.

Prior to January 1971, Mrs. Lopez and her husband

---

sister, uncle, aunt, first cousin, nephew or niece, in a place of residence maintained by one or more of such relatives as his or their own home and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or . . . medical care in behalf of any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law *to meet the needs of the relative* with whom any dependent child is living and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 407) . . .;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) of this section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

. . . .

42 U.S.C.A. § 606 (emphasis supplied).

were residing in San Benito, Texas, with their son, Eleno, and their daughter, Carmen, together with their second daughter, Margarita, and her three minor children. Having been abandoned by the children's father, Margarita's family was receiving a monthly AFDC payment of $119. This amount was computed by first analyzing Margarita's total family needs according to certain minimum standards of need which the Texas State Department of Public Welfare has determined represent the cost of basic requisites essential for health and decency—in this instance $159.[5] This figure included the needs of Margarita, the caretaker relative, as well as the needs of the three dependent children, since Margarita was needy and did not live with her spouse. As a means of limiting Texas' welfare expenditures, the State applies a percentage factor of 75% to the family's total needs to arrive at their recognizable needs. Non-exempt family income, which here was zero, is then deducted from this figure to determine the amount of the family's AFDC grant.[6]

The other members of the Lopez family (the two grandparents, Eleno, and Carmen) were not receiv-

---

[5]In Texas the budgetary "standards of need" are as follows:

PERSONAL NEEDS	
Adult Caretaker	$65 per month
Child (each)	$25 per month
SHELTER (private)	
Family of 2	$33 per month
Family of 3-4	$44 per month
Family of 5 or more	$50 per month
UTILITIES	$13 per month

[6]The budgetary process was applied to Margarita's family as follows:

Margarita—personal needs	$ 65.00
Three children—personal needs	75.00
Pro rata share of shelter needs	12.52
Pro rata share of utilities	6.52
Family's total needs	$159.04
Family's recognizable needs	

ing AFDC assistance. They were supported by Mr. Lopez's weekly salary of approximately $35, out of which he paid for the personal needs of himself, Mrs. Lopez, Eleno, and Carmen, as well as for their pro rata share of the rent and utilities. Although Mr. Lopez's salary was not sufficient to cover the minimum recognizable needs of his family ($152 v. $154), the members of the Lopez family were not eligible under § 406 of the Social Security Act for an AFDC grant because both parents were present in the home. *See* note 4 *supra.*

On November 29, 1970, Margarita died, leaving her three minor children in the care of their grandparents. On January 1, 1971, the AFDC grant was reduced from $119 to $56 because of the death of the caretaker relative.[7] Thereafter, Mrs. Lopez requested that she be

---

(75% of Total Needs)	$119.28
Less non-exempt income	0.00
Deficit of AFDC Grant (rounded off)	$119.00

While we accept the accuracy of these figures, taken from appellant's brief, we note that the $12.52 allocated for the shelter needs of Margarita and her three children does not comply with the Texas budgetary standards for a family of four. *See* note 5 *supra.* Indeed, the allocated amount is not even equivalent to 1/2 of the budgeted shelter needs for a family of eight. *See* note 5 *supra.*

[7]The needs of the family were computed as follows:

Personal needs of 3 children	$75
Shelter needs	0
Utilities	0
Total needs	$75
Recognizable needs	$56
AFDC Grant	$56

For some unexplained reason, the grandfather was now for the first time assumed to be supplying all of the grandchildren's shelter and utilities. Thus, the children lost not only that portion of their grant attributable to the personal, shelter, and utilities needs of their mother, but they also lost that part of their grant attributable to their own shelter and utilities needs.

substituted on the grant for her deceased daughter as the caretaker relative of the children. Mrs. Lopez did not request that either her husband or her two children be made part of the grant, as she conceded that there was no basis for their eligibility. Although Mrs. Lopez was needy and was within the category of relatives eligible to be a caretaker, her request was denied pursuant to §§ 3411 and 3454 of the Texas *Financial Services Handbook* because she was living with her spouse and because she was neither incapacitated nor a recipient of another category of public assistance.

In November 1971, after the Appeals Hearing Officer of the Texas State Department of Public Welfare had sustained the denial of her request, Mrs. Lopez filed this suit, challenging the validity of the regulations. The district court dismissed her complaint in January 1972. Believing that the regulations in question "are directly related to the state's determination of need," the district court concluded that "§§ 3411 and 3454 . . . are reasonable, [and] do not contravene the provisions of the Social Security Act. . . ." We disagree. The plain language, legislative history, and purposes of the Act make clear that so long as one is needy and qualifies as a caretaker relative within the meaning of § 406, 42 U.S.C.A. § 606, no further restriction on eligibility for assistance is permissible.

Although a State, in the interest of preserving the fiscal integrity of its welfare program by economically allocating limited resources, has the "undisputed power to set the level of benefits,"[3] the Supreme Court in *Townsend v. Swank*, 1971, 404 U.S. 282, 291, held that "AFDC resources may not be protected by the device

---

[3] *King v. Smith*, 1968, 392 U.S. 309, 334; *see Dandridge v. Williams*, 1970, 397 U.S. 471.

of adopting eligibility by requirements restricting the class . . . made eligible by federal standards. . . ." Thus, while a State may establish criteria for measuring need (*e.g.*, Texas' budgetary standards) and may limit its welfare expenditures by setting the level of benefits (e.g., Texas' percentage factor at 75%), the class of persons eligible for assistance must be determined by reference to federal standards. *See Jefferson v. Hackney*, 1972, 406 U.S. 535.

The challenged regulations are precisely the type of blanket exclusion from eligibility condemned by *Townsend*. Section 406(b)(1) defines "aid to families with dependent children" as payments to meet the needs of *both* the dependent children *and* the caretaker relative with whom the children reside. Nowhere does the statute indicate that the caretaker must be a single individual in order for his or her needs to be included in calculating the amount of the AFDC grant. For a family to be eligible for AFDC assistance, the needy children, in addition to living with certain specified relatives, must have been "deprived of *parental* support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a *parent*." 42 U.S.C.A. § 606(a) (emphasis supplied). It is the absence of a *parent* which is critical to AFDC eligibility, not the presence of a relative or the spouse of a relative. In fact, in defining a "dependent child" as one who resides with "*one or more*" of the specified relatives § 406(a) explicitly recognizes that a child might be living with a married relative. Similarly, § 406(c) defines a "relative with whom any dependent child is living" as "one of the relatives specified in subsection (a) and with whom such child is living . . . in a place of residence maintained by such individual (*himself or together with any one or more of*

the relatives so specified) as his (*or their*) own home." 42 U.S.C.A. § 606(c) (emphasis supplied). Thus, although money payments are generally available only to meet the needs of one of the relatives with whom the child is living, 42 U.S.C.A. § 606(b)(1), the presence of other relatives in the home, including the spouse of the caretaker relative, was clearly foreseen. Indeed, the Act not only contemplates the presence of the caretaker's spouse, but specifies that in certain situations the spouse is *also* to receive aid, 42 U.S.C.A. § 606(b)(1). This particularization is cogent evidence that Congress did not authorize the states to limit eligibility to unmarried caretakers. *Cf. Townsend v. Swank, supra*, 404 U.S. at 287. If the spouse of a caretaker, as well as the caretaker, is in some situations eligible to receive aid, certainly the mere presence of the spouse cannot disqualify the caretaker for assistance.

In sum, we conclude that §§ 3411 and 3454 of the Texas *Financial Services Handbook* are clearly in conflict with 42 U.S.C.A. § 606 and must, therefore, give way to the federal standards for AFDC eligibility. Because we find the regulations to be inconsistent with the Social Security Act, resolution of Mrs. Lopez's Equal Protection claim is unnecessary.

The judgment of the district court is reversed and the cause is remanded for further proceedings consistent with this opinion.

REVERSED and REMANDED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION
No. 71-B-145

CONSUELO LOPEZ, Individually and on behalf of all other persons similarly situated,
vs.
RAYMOND W. VOWELL, Commissioner of Public Welfare, State of Texas, Individually, and in his official capacity,

and

CIVIL ACTION
No. 71-B-146

LYDIA REYNA, DOLORES R. GARCIA, PEDRO ESPINOSA and RUMALDA G. CARLOS, Individually and on behalf of their minor children and all other persons similarly situated,
vs.
RAYMOND W. VOWELL, Commissioner of Public Welfare, State of Texas, Individually and in his official capacity.

J. L. COVINGTON, of Harlingen, Texas;
for the Plaintiffs.

HONORABLE CRAWFORD C. MARTIN, Attorney General of Texas, and JACK SPARKS, Assistant Attorney General, of Austin, Texas; for the Defendant.

MEMORANDUM AND ORDER OF DISMISSAL

On November 10, 1971, two suits, Civil Actions

71-B-145 and 71-B-146, hereby consolidated, were filed in this Court. The suits challenge the constitutionality of several provisions of the *Financial Services Handbook* of the Texas Department of Public Welfare, asserting that the provisions are in conflict with provisions of the Social Security Act (42 U.S.C.A. §301 et seq), and the regulations promulgated pursuant thereto, and seek to enjoin their enforcement. The Plaintiffs herein, proceeding *in forma pauperis*, would represent a class of indigents who are denied Aid to Families with Dependent Children (AFDC) benefits, under the disputed state provisions. Defendant Raymond W. Vowell is the executive and administrative officer of the State Department of Public Welfare, who discharges all administrative and executive functions of the Department. Defendant filed motions to dismiss in both causes, which are now before the Court.

Jurisdiction is conferred on this Court by 28 U.S.C.A. §1343 (3) (4). *Johnson* v. *Harder*, 438 F.2d 7 (CA 2 1971). As will be evident, both suits may be maintained as class actions under Rule 23(a) and (b) (2), Federal Rules of Civil Procedure.

Civil Action 71-B-145 requests this Court to declare invalid and enjoin the enforcement of §§ 3411(4) and 3454, Paragraph I, of the *Financial Services Handbook* of the Texas State Department of Public Welfare, which provide as follows:

> "3411 Caretaker . . . must be a single relative (either a legal parent or another single relative) within the specified degree of relationship. However, no caretaker will be certified (and *only* the needs of the child(ren) may be budgeted) if the relatives are a married couple and each spouse is present, unless incapacity or receipt of categorical assistance is involved."

"3454 *Special Regulations Regarding Children Placed in Home of Relative*

In those situations where the child(ren) live with relatives, within the specified degree of relationship (i.e., a legally married couple) other than parents (e.g., grandfather, grandmother, uncle and aunt, etc.), neither relative may be designated as a caretaker and only the needs of the eligible children may be included in the assistance grant *unless* (a) one of the relatives is determined to be incapacitated by the Medical Review Team and is otherwise eligible (the Medical Review is to determine ability to support spouse and not for purpose of determining deprivation) *or* (b) the relative's spouse is a recipient of categorical assistance."

Consuelo Lopez, named Plaintiff, suing on behalf of all others similarly situated, is the grandmother of three minor children who have been abandoned by their father, and whose mother is deceased. Plaintiff and her husband, as grandparents of the three children, have been caring for them since their mother's demise on or about November 29, 1970. The surviving father provides no support or assistance. Grandfather Eleno Lopez works as a farm laborer and earns some $40.00 weekly. Plaintiff grandmother receives a monthly AFDC grant in the amount of $56.00 for the three children. Since Plaintiff is not considered a "caretaker" for AFDC purposes, under the above quoted provisions of the *Financial Services Handbook*, her own needs are not considered in computing the amount of the AFDC grant, in that neither she nor her spouse are incapacitated, nor is either the recipient of categorical assistance. Plaintiff has appealed the decision of the welfare worker that she was ineligible

for AFDC benefits, and the Appeals Hearing Officer sustained the decision of the worker on June 11, 1971, AFDC 209837.

The Court must view the disputed state provisions in light of the Social Security Act, in that the AFDC program is in part federally funded, and any state regulations which contravene the Social Security Act must fall. *Townsend* v. *Swank*, Nos. 70-5021 and 70-5032—Slip opinion, December 20, 19717, ... U.S. ..... (1971). The statutory analysis in AFDC cases must consider that "the federal law gives each state great latitude in dispensing its available funds." *Dandridge* v. *Williams*, 397 U.S. 471, 478 (1970). There is no question that states have the power to determine the standard of need and the level of benefits, *Dandridge, supra; Stinson* v. *Finch*, 317 F.Supp. 581 (ND Ga. 1970); *Conner* v. *Finch*, 314 F.Supp. 364 (ND Ill. 1970), aff'd 400 U.S. 1003 (1971); *Westberry* v. *Fisher*, 297 F.Supp. 1109 (D. Maine S.D. 1969); and to uphold a state regulation, "It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor." *Dandridge, supra*, p. 486. Of great importance in analyzing a state regulation is whether the regulation is related to need; a regulation which does not consider the financial situation of a family may be struck down. *King* v. *Smith*, 392 U.S. 309 (1968).

With these propositions in mind, it may be seen that the regulations here in question (§§ 3411 and 3454) are directly related to the state's determination of need. The regulations set forth the requirements which custodians of dependent children must meet to themselves be eligible for AFDC payments. Under

§3411, if the relatives with whom the children live are married and neither is incapacitated nor the recipient of categorical assistance, the state has determined that only the needs of the children may be budgeted. This is clearly a determination of need by the state and is valid. One of the statutory requirements is that "aid to families with dependent children . . . shall be furnished with reasonable promptness to all eligible individuals . . .". 42 U.S.C.A. 602(a) (10). There is no question here that the children involved are receiving aid. The constitution does not empower federal courts to "second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients". *Dandridge, supra*, p. 487. Eligibility factors limiting eligibility to those dependent children living with relatives in a specified degree (as in §3454 of the *Financial Services Handbook*) are consistent with the general declarations of the Social Security Act and are not unconstitutional. *Cheley* v. *Burson*, 324 F.Supp. 678 (ND Ga. 1971). "From its inception, the Act has defined 'dependent child' in part by reference to the relatives with whom the child lives. When a 'dependent child' is living with relatives, then 'aid' also includes payments and medical care to those relatives, including the spouse of the child's parent." *Dandridge*, p. 479. It is undisputed that a state may consider the relative with whom a child lives when computing welfare payments, and it is clear that Texas does so when it determines that a need exists. See §3411.

If the state legitimately and reasonably determines that need in certain cases does not exist, it is certainly not required under the Act to expend its funds. The Court finds, therefore, that as to Plaintiff Consuelo Lopez and all others similarly situated, regulations

§§3411 and 3454 of the *Financial Services Handbook* are reasonable, do not contravene the provisions of the Social Security Act, and are not unconstitutional. The state has, under its power to determine need, found that married persons who care for dependent children do not require more than the payments for the children themselves, when neither spouse is incapacitated, and when neither spouse is the recipient of categorical assistance.